

PATENT
Attorney Docket No. 101.0093-01000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of:
Gary K. Michelson
Serial No.: 10/675,820
Filed: September 30, 2003
For: DYNAMIC GUARD

) Confirmation No.: 6670
)
) Group Art Unit: 3775
) Examiner: James L. Swiger III
)

AUG 26 2009

Mail Stop APPEAL BRIEF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

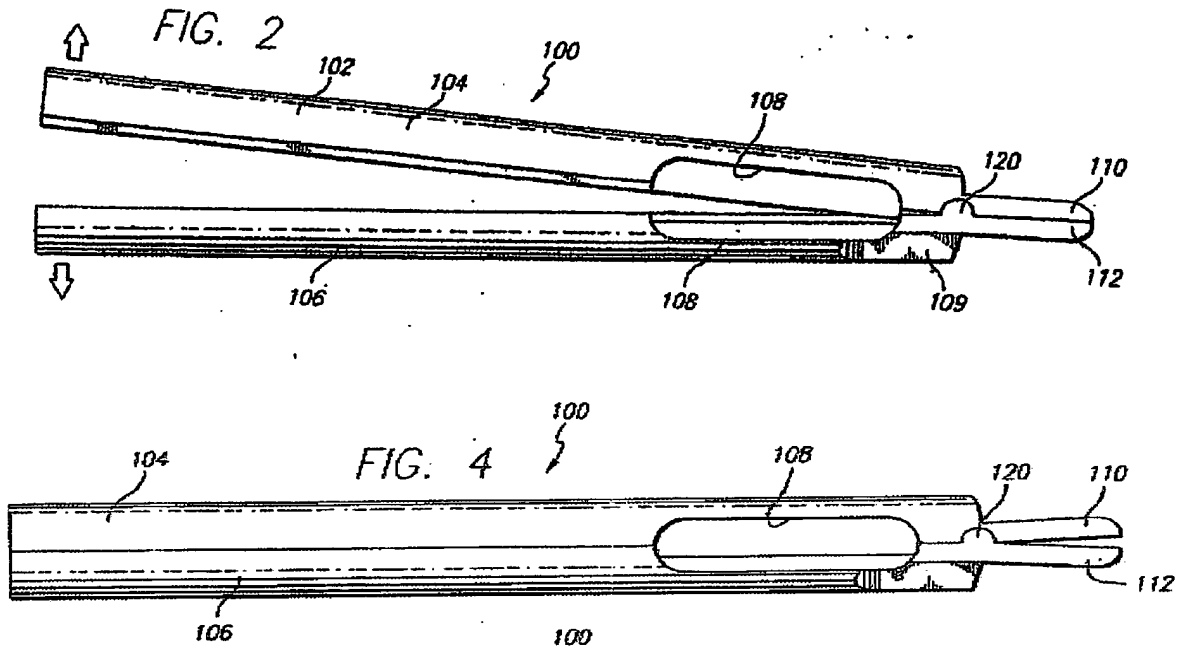
In a communication dated July 30, 2009, the Examiner indicated that the Summary of Claimed Subject Matter included in the Appeal Brief submitted on January 23, 2009 is not in compliance with 37 CFR § 41.37(c). In response thereto, please replace the Summary of Claimed Subject Matter included in the Appeal Brief submitted on January 23, 2009 with the following Summary of Claimed Subject Matter.

Summary of Claimed Subject Matter

Independent Claim 1.

The claimed invention, in one preferred embodiment, is generally drawn to a guard (100) for use in human spinal surgery. The guard (100) has a body (102), as shown in Fig. 14, having a leading end and an opposite trailing end in relation to a human spine. (Specification at page 4, lines 17 and 18.) As shown in Figs. 2 (included below) and 4 (included below), the body (102) has a first portion (104) and a second portion (106) having a pivotal relationship to one another between an open position and a closed position. (Specification at page 4, lines 18-20.)

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The first and second portions (104) and (106) have at least in part opposed interior arcuate portions, and the first and second portions (104) and (106) define an opening for providing a protected pathway to adjacent vertebral bodies and a disc space therebetween. (Figs. 6 and 15, and specification at page 4, lines 20-23 and page 12, lines 11-14.) As shown in Fig. 2 (included above), the first and second portions (104) and (106) are pivotal about an axis that passes through at least a portion of the pathway. (Fig. 2 (described on page 12, lines 11-15 of the specification) shows the first and second portions are pivotal about an axis that passes through at least a portion of the pathway.) The opposed interior arcuate portions are parallel to one another when the body (102) is in the closed position (Fig. 4), and the opposed arcuate portions are angled to one another when the body (102) is in the open position (Fig. 2). (Fig. 4, shows the opposed interior arcuate portions are parallel to one another when the body (102) is in the closed position. Fig. 2, shows the opposed arcuate portions are angled to one another when the body is in the open position.) The opening defined by the first and second portions (104) and (106) is generally circular when the guard (100) is in the closed position. (Figs. 6 and 15, and specification at page 12, lines 11 and 12.)

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As shown in Figs. 16 and 18, the opposed interior arcuate portions are adapted to guide therethrough a surgical instrument. (Specification at page 4, lines 23 and 24, page 14, lines 26-28, and page 15, lines 10-13.) The body (102) has an exterior surface (116) that has opposed upper and lower surfaces, and opposed side surfaces. (Fig. 6 (described on page 13, lines 8 and 9 of the specification) shows that the exterior surface has opposed upper and lower surfaces and opposed side surfaces.) The opposed upper and lower surfaces, and the opposed side surfaces are at least in part arcuate, and the opposed upper and lower surfaces are oriented toward the adjacent vertebral bodies. (Specification at page 12, lines 11 and 12 indicates that the guard (100) has a circular cross-section, and Fig. 15 shows that the opposed upper and lower surfaces, and the opposed side surfaces are at least in part arcuate, and that the opposed upper and lower surfaces are oriented toward the adjacent vertebral bodies.) Finally, the first and second portions (104) and (106) of the body (102) form a tube when in the closed position. (Fig. 6 (described on page 13, lines 8 and 9 of the specification) shows that the first and second portions of the body form a tube when in the closed position.)

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: August 26, 2009

By: 
Thomas H. Martin
Registration No. 34,383

1557 Lake O'Pines Street, NE
Hartville, Ohio 44632
Telephone: (330) 877-0700
Facsimile: (330) 877-2030